

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 2nd day of May, two thousand eight.

PRESENT:

HON. JOSEPH M. McLAUGHLIN,

HON. JOSÉ A. CABRANES,

HON. ROBERT D. SACK,

Circuit Judges.

SHAW YUN WENG, a.k.a. SHAO YUN WENG,
Petitioner,

v.

MICHAEL B. MUKASEY,¹
U.S. ATTORNEY GENERAL,
Respondent.

04-5325-ag
NAC

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General John Ashcroft as the respondent in this case.

1 **FOR PETITIONER:** **Lin Li, New York, New York.**

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3 **FOR RESPONDENT:** **Jeffrey S. Bucholtz, Acting**
4 **Assistant Attorney General; David V.**
5 **Bernal, Assistant Director; Liza S.**
6 **Murcia, Attorney, Office of**
7 **Immigration Litigation, U.S.**
8 **Department of Justice, Washington,**
9 **D.C.**

10
11 UPON DUE CONSIDERATION of this petition for review of a
12 decision of the Board of Immigration Appeals ("BIA"), it is
13 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
14 review is DISMISSED, in part, and DENIED, in part.

15 Petitioner Shaw Yun Weng, also known as Shao Yun Weng,
16 a native and citizen of the People's Republic of China,
17 seeks review of a September 23, 2004 order of the BIA
18 affirming the August 27, 2003 decision of Immigration Judge
19 ("IJ") Theresa Holmes-Simmons denying petitioner's
20 applications for asylum, withholding of removal, and relief
21 under the Convention Against Torture ("CAT"). *In re Shaw Yun*
22 *Weng*, No. A78 840 552 (B.I.A. Sept. 23, 2004), *aff'g* No. A78
23 840 552 (Immig. Ct. N.Y. City, Aug. 27, 2003). We assume
24 the parties' familiarity with the underlying facts and
25 procedural history of the case.

26 Where, as here, the BIA summarily affirms the decision
27 of the IJ without issuing an opinion, see 8 C.F.R.

1 § 1003.1(e)(4), this Court reviews the IJ's decision as the
2 final agency determination. *See, e.g., Twum v. INS*, 411
3 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep't of*
4 *Justice*, 362 F.3d 155, 159 (2d Cir. 2004). We review the
5 agency's factual findings under the substantial evidence
6 standard, treating them as "conclusive unless any reasonable
7 adjudicator would be compelled to conclude to the contrary."
8 8 U.S.C. § 1252(b)(4)(B); *see also Manzur v. U.S. Dep't of*
9 *Homeland Sec.*, 494 F.3d 281, 289 (2d Cir. 2007). However,
10 we will vacate and remand for new findings if the agency's
11 reasoning or its fact-finding process was sufficiently
12 flawed. *See Cao He Lin v. U.S. Dep't. of Justice*, 428 F.3d
13 391, 406 (2d Cir. 2005).

14 As an initial matter, we lack jurisdiction to review
15 any challenge to the agency's denial of withholding of
16 removal and relief under the CAT because Weng did not
17 present a meaningful challenge to the IJ's denial of these
18 categories of relief before the BIA. 8 U.S.C. § 1252(d)(1);
19 *Karaj v. Gonzales*, 462 F.3d 113, 119 (2d Cir. 2006). The
20 petition for review is dismissed to that extent. *Id.*

21 Regarding asylum, we find that the IJ's adverse
22 credibility determination was supported by substantial

1 evidence. The IJ found at least seven inconsistencies or
2 implausibilities within Weng's testimony and between that
3 testimony and the documentary evidence he submitted. The IJ
4 properly questioned whether Weng was a member of Falun Gong,
5 which was the basis of his claim for relief, because he
6 could not identify where his Falun Gong certificate had come
7 from, nor could he list any of the eight moral characters of
8 Falun Gong printed on this certificate. See *Secaida-Rosales*
9 *v. INS*, 331 F.3d 297, 308 (2d Cir. 2003).² We also find
10 reasonable the IJ's conclusion that it was implausible that
11 Weng would have divorced his wife and fled his country on
12 account of problems caused by his Falun Gong practice, only
13 to practice "when he's in a good mood" or about once a week
14 after reaching the United States. See *Wensheng Yan v.*

²Unlike *Rizal v. Gonzales*, 442 F.3d 84, 90-92 (2d Cir. 2006), in which this Court found that an applicant need not possess a certain quantum of doctrinal knowledge to be eligible for asylum, here, the IJ's implausibility finding was based on questions stemming directly from the certificate that Weng submitted. Given Weng's testimony that he had practiced Falun Gong for six months and demonstrated his knowledge of Falun Gong to obtain the certificate, the IJ did not err in finding that Weng's inability to testify to any of the moral characters was a negative factor in assessing his credibility. *Id.* at 90 ("Indeed, we can certainly imagine instances in which the nature of an individual applicant's account would render his lack of a certain degree of doctrinal knowledge suspect and could therefore provide substantial evidence in support of an adverse credibility finding . . .").

1 *Mukasey*, 509 F.3d 63, 66-68 (2d Cir. 2007).

2 Furthermore, the IJ properly found inconsistencies
3 between Weng's testimony and his supporting evidence. The
4 IJ properly gave Weng's purported statement of dismissal
5 little weight where it contradicted his own testimony as to
6 when he became a Falun Gong practitioner. See *Xiao Ji Chen*
7 *v. U.S. Dep't of Justice*, 471 F.3d 315, 342 (2d Cir. 2006).
8 The IJ also noted multiple inconsistencies between Weng's
9 testimony and a letter from his friend, Xin Nian Ma, as to
10 whether Ma himself was a Falun Gong practitioner, whether
11 Weng's father had passed away in 2002, and whether a mutual
12 friend had experienced any problems associated with Falun
13 Gong. See *Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir.
14 2006) (per curiam). Finally, the IJ properly found that
15 Weng did not produce any medical records to substantiate his
16 claim that he was beaten by the police. *Xiao Ji Chen*, 471
17 F.3d at 341; *Zhou Yun Zhang v. I.N.S.*, 386 F.3d 66, 78 (2d
18 Cir. 2004), overruled in part on other grounds by *Shi Liang*
19 *Lin v. U.S. Dept. of Justice*, 494 F.3d 296, 305 (2d Cir.
20 2007) (en banc). These findings, all proper, were "specific
21 examples in the record of inconsistent statements" and,
22 thus, provided substantial evidence for the IJ's adverse

1 credibility determination. *Zhou Yun Zhang*, 386 F.3d at 74.

2 As such, we need not reach the IJ's additional adverse
3 credibility findings.

4 For the foregoing reasons, the petition for review is
5 DISMISSED, in part, and DENIED, in part. As we have
6 completed our review, any pending motion for a stay of
7 removal in this petition is DISMISSED as moot. Any pending
8 request for oral argument in this petition is DENIED in
9 accordance with Federal Rule of Appellate Procedure
10 34(a)(2), and Second Circuit Local Rule 34(d)(1).

11
12 FOR THE COURT:
13 Catherine O'Hagan Wolfe, Clerk
14

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16 By: _____